

CHAPTER 5

FIRE PREVENTION AND PROTECTION

ARTICLE 5.01 GENERAL PROVISIONS

(Reserved)

ARTICLE 5.02 FIRE DEPARTMENT^{i*}

Division 1. Generally

Sec. 5.02.001 Deferral of federal income taxes

An ordinance permitting firefighters to defer federal income taxes under the terms of section 30 of the Texas Local Fire Fighters' Retirement Act is hereby passed. (Ordinance 2121 adopted 12/30/95)

State law reference—Texas Local Fire Fighters Retirement Act, V.T.C.S., art. 6243e.

Secs. 5.02.002–5.02.030 Reserved

Division 2. Fire and Arson Investigators

Sec. 5.02.031 Authorization to commission investigators

The chief of the municipal fire department, or his designee, shall hereby be authorized to do all things proper and necessary to obtain authorization from the state commission on law enforcement officer standards and education to commission qualified fire department personnel as arson and fire investigators. (Ordinance 2180, sec. A, adopted 1/21/98)

Sec. 5.02.032 Limitation on jurisdiction

The law enforcement jurisdiction of the person or persons commissioned as fire and arson investigators shall be limited to matters related to arson criminal investigations and arrest. (Ordinance 2180, sec. B, adopted 1/21/98)

Sec. 5.02.033 Duties

The fire and arson investigators shall conduct all criminal investigations of arson and arson arrests in consultation and in coordination with the city's police department. (Ordinance 2180, sec. C, adopted 1/21/98)

Sec. 5.02.034 Scope

This division is not intended to create a new civil service position, classification, pay grade or pay scale. (Ordinance 2180, sec. D, adopted 1/21/98)

ARTICLE 5.03 FIRE MARSHAL

Sec. 5.03.001 Office created

The office of fire marshal is hereby created. Such office shall be independent of other city departments, the fire marshal reporting directly to the fire chief. Such office shall be filled by appointment by the mayor, by and with the consent of the city commission. The fire marshal shall be properly qualified for the duties of his or her office. (Ordinance 424, sec. 1, adopted 2/13/35; Ordinance adopting Code)

Sec. 5.03.002 Duty to investigate fires

The fire marshal shall investigate the cause, origin, and circumstances of every fire occurring within this city by which property has been destroyed or damaged and shall specially make investigation as to whether such fire was the result of carelessness or design. Such investigation shall be begun within twenty-four (24) hours, not including Sunday, of the occurrence of such fire. The fire marshal shall keep in his or her office a record of all fires, together with all facts, statistics and circumstances, including the origin of the fires and the amount of the loss, which may be determined by the investigation required by this article. (Ordinance 424, sec. 2, adopted 2/13/35)

Sec. 5.03.003 Duty to pursue prosecution of arsons

The fire marshal, when in his or her opinion further investigation is necessary, shall take or cause to be taken the testimony, on oath, of all persons supposed to be cognizant of any facts or to have means of knowledge in relation to the matter under investigation, and shall cause the same to be reduced to writing; and if he or she shall be of the opinion that there is evidence sufficient to charge any person with the crime of arson, or with the attempt to commit the crime of arson, or of conspiracy to defraud, or criminal conduct in connection with such fire, he or she shall cause such person to be lawfully arrested and charged with such offense, or either of them, and shall furnish to the proper prosecuting attorney all such evidence, together with the names of witnesses and all of the information obtained by him, including a copy of all pertinent and material testimony taken in the case. (Ordinance 424, sec. 3, adopted 2/13/35)

Sec. 5.03.004 Power to summon witnesses and require submission of evidence

The fire marshal shall have the power to summon witnesses before him or her to testify in relation to any matter which is by the provisions of this article a subject of inquiry and investigation and may require the production of any book, paper or document deemed pertinent

thereto. The fire marshal is hereby authorized and empowered to administer oaths and affirmations to any persons appearing as witnesses before him or her. (Ordinance 424, sec. 4, adopted 2/13/35)

Sec. 5.03.005 Unlawful to refuse to provide testimony or evidence

Any witness who refuses to be sworn, or who refuses to appear or testify, or who disobeys any lawful order of said fire marshal, or who fails or refuses to produce any book, paper or document touching any matter under examination, or who is guilty of any contemptuous conduct during any of the proceedings of the fire marshal in the matter of said investigation or inquiry, after being summoned to give testimony in relation to any matter under investigation as aforesaid, shall be deemed guilty of a misdemeanor; and it shall be the duty of the fire marshal to cause all such offenders to be prosecuted. Any person being convicted of any such misdemeanor shall be fined in accordance with the general penalty in section 1.01.009 of this code; provided, however, that any person so convicted shall have the right of appeal. (Ordinance 424, sec. 5, adopted 2/13/35)

Sec. 5.03.006 Investigation may be private

All investigations held by or under the direction of the fire marshal may, in his or her discretion, be private, and persons other than those required to be present may be excluded from the place where such investigation is held, and witnesses may be kept separate and apart from each other and not allowed to communicate with each other until they have been examined. (Ordinance 424, sec. 6, adopted 2/13/35)

Sec. 5.03.007 Authority to examine buildings

(a) When fire has occurred. The fire marshal shall have the authority at all times of day or night, when necessary, in the performance of the duties imposed upon him/her by the provisions of this article, to enter upon and examine any building or premises where any fire has occurred, and other buildings and premises adjoining or near the same, which authority shall be exercised only with reason and good discretion. (Ordinance 424, sec. 7, adopted 2/13/35)

(b) Upon complaint. The fire marshal, upon complaint of any person having an interest in any building or property adjacent and without any complaint, shall have a right at all reasonable hours, for the purpose of examination, to enter into and upon all buildings and premises within the city, and it shall be his or her duty, monthly or more often, to enter upon and make or cause to be entered and made a thorough examination of all mercantile, manufacturing and public buildings, together with the premises belonging thereto. Whenever he or she shall find any building or other structure which, for want of repair, or by reason of age or dilapidated conditions, or for any reason, is especially liable to fire, and which is so situated as to endanger persons or property, or so occupied that fire would endanger persons or property therein, and whenever he or she shall find an improper or dangerous arrangement of stoves, ranges, furnaces or other heating appliances of any kind whatsoever, including chimneys, flues, and pipes with which the same may be connected, or a dangerous arrangement of lighting devices or systems, or a dangerous or unlawful storage of explosives, compounds, petroleum, gasoline, kerosene,

dangerous chemicals, vegetable products, ashes, combustible, inflammable and refuse materials, or other conditions which may be dangerous in character or liable to cause or promote fire or create conditions dangerous to the firefighters or occupants, he or she shall order the same to be removed or remedied, and such order shall be forthwith complied with by the owner or occupant of said building or premises. Provided, however, that if the owner or occupant deems himself or herself aggrieved by such order, he or she may within five (5) days appeal to the city commission, who shall investigate the cause of the complaint, and unless by his or her authority the order is revoked such order shall remain in force and be forthwith complied with by said owner or occupant. (Ordinance 424, sec. 8, adopted 2/13/35)

(c) Should entry for the purposes of investigation be denied, the fire marshal shall obtain a search warrant unless immediate entry is otherwise authorized by law due to an exigent circumstance or circumstances. (Ordinance adopting Code)

Sec. 5.03.008 Maintaining fire hazards punishable by fine

(a) Any owner or occupant of a building or other structure or premises, who shall keep or maintain the same when, for want of repair, or by reason of age or dilapidated condition, or for any cause, it is especially liable to fire, and which is so situated as to endanger buildings or property of others, or is especially liable to fire and which is so occupied that fire would endanger other persons or their property therein shall be punished by a fine in accordance with the general penalty in section 1.01.009 of this code.

(b) Any owner or occupant of any building or other structure, or premises, who shall keep or maintain the same with an improper arrangement of a stove, range, furnace, or other heating appliance of any kind whatever, including chimneys, flues, and pipes with which the same may be connected, so as to be dangerous in the matter of fire, or health, or safety of persons or property of others; or who shall keep or maintain any building, other structure or premises with an improper arrangement of a lighting device or system, or with a storage of explosives, petroleum, gasoline, kerosene, chemicals, vegetable products, ashes, combustibles, inflammable materials, refuse, or with any other condition which shall be dangerous in character in the persons, health or property of others; or which shall be dangerous in the matter of promoting, augmenting or causing fires; or which shall create conditions dangerous to firefighters, or occupants of such building, structure or premises other than the maintainor therefor shall be punished by a fine in accordance with the general penalty in section 1.01.009 of this code.

(Ordinance 424, secs. 9, 10, adopted 2/13/35)

Sec. 5.03.009 Notice of violations required before prosecutions

No prosecution shall be brought under section 5.03.008 hereof until the order provided for in section 5.03.007 be given and the party notified shall fail or refuse to comply with the same. (Ordinance 424, sec. 11, adopted 2/13/35)

Sec. 5.03.010 Recovery of penalties by city

The penalties provided for herein shall be recovered by the city in the same manner as provided by law for the enforcement of fines, forfeitures, and punishments for offenses against the city. (Ordinance 424, sec. 12, adopted 2/13/35)

Sec. 5.03.011 Every day of violation constitutes separate offense

Every day's maintenance of any of the conditions prohibited in any of the foregoing sections shall be a distinct and separate offense. (Ordinance 424, sec. 13, adopted 2/13/35)

Sec. 5.03.012 Prosecutions to be handled like other misdemeanors against city

All misdemeanors herein provided for shall be prosecuted, and all fines and forfeitures herein provided for shall be recovered and enforced, in the same manner as provided by law for the enforcement of fines, forfeitures, penalties and punishments for offenses generally against the city. (Ordinance 424, sec. 14, adopted 2/13/35)

ARTICLE 5.04 CODES

Sec. 5.04.001 Fire code adopted

The 2006 edition of the International Fire Code, including the appendix chapters, is hereby adopted by reference the same as if set forth in full in this section.

Sec. 5.04.002 Life safety code adopted

The 2006 edition of the International NFPA Life Safety 101 Code, including the appendix chapters, is hereby adopted by reference the same as if set forth in full in this section.

(Ordinance 2393, sec. I, adopted 4/17/07)

Sec. 5.04.003 Penalty for violation

Any person, individual, corporation, partnership or entity of any type violating the provisions of this code shall be guilty of a misdemeanor and shall be punished as provided in section 1.01.009. Each day that a violation occurs or continues to exist shall be considered a separate offense. (Ordinance 2393, sec. II, adopted 4/17/07)

ARTICLE 5.05 EXPLOSIVES AND FIREWORKS

Division 1. Generally

Secs. 5.05.001–5.05.030 Reserved

Division 2. Storage and Transportation of Explosives

Sec. 5.05.031 Storage permit

(a) It shall be unlawful for any person to store or keep any explosives within the corporate limits of the city, this to include what is commonly known as “fireworks,” used on the Fourth of July and other festival occasions, except under permit therefor, as provided in this division.

(b) Any person desiring to store explosives or fireworks in the city limits shall apply to the city secretary for a permit to store same; said application to name the kind of explosive, or fireworks, amount to be stored, length of time storage desired, place of storage, kind of magazines for storage, and length of time storage desired. Said applications shall be referred to the fire marshal of the city, who shall make a full investigation and report to the city commission. After said report is received and considered by the city commission, said commission may at its option instruct the city secretary to issue a permit for the storage of said explosives, or fireworks, said permit to be for a time set by said commission.

Sec. 5.05.032 Storage magazines

Storage magazines, in which explosives may be kept or stored, shall be magazines in which not more than fifty (50) pounds of explosives may be kept or stored at any one time, provided that no caps shall be kept in the same magazines. All magazines shall be constructed of two-inch (2") oak or hardwood boards with proper lids and hinges, and kept securely locked at all times.

Sec. 5.05.033 Parking of vehicles

All vehicles carrying explosives shall never be left on the streets of the city, except when the driver is making or receiving delivery of goods from the vehicle, and then only when the motive power is entirely stopped and brakes set.

Sec. 5.05.034 Penalty for violation

Any person violating this division shall upon conviction be fined in accordance with the general penalty in section 1.01.009 of this code.

(Ordinance 604 adopted 7/26/54)

Secs. 5.05.035–5.05.060 Reserved

Division 3. Fireworks^{ii*}

Sec. 5.05.061 Discharge

No person, firm, company, corporation or association shall cast, throw or fire any squib, rocket, cracker, or torpedo, grenade, gun, revolver, pistol, cap or cartridge, or other combustible fireworks of any kind in the city. (Ordinance 571, sec. 1, adopted 7/21/52)

Sec. 5.05.062 Sale or possession

No person, firm, company, corporation or association shall exhibit or have in his possession, with intent to give away or sell or offer for sale or sell within the city, any squib, rocket, cracker, torpedo, grenade, or other combustible fireworks of any kind in the city; provided, however, that this section shall not apply to the sale of any such articles for private or public demonstration as herein provided. (Ordinance 571, sec. 2, adopted 7/21/52)

Sec. 5.05.063 Exemptions

Nothing in this division shall be construed to apply to the sale, storage or use of railroad track torpedoes, nor to the sale, storage or use of flashlight composition by photographers or dealers in photographic supplies or prevent any public or private demonstration or display of fireworks of any kind if conducted under proper police control after application made and permit issued by the city secretary for such demonstration. Said permit shall not be granted unless such demonstration or display shall be of such a character and so located, discharged or fired as in the opinion of the city commission, after proper inspection, shall not be hazardous to property or endanger any person or persons. (Ordinance 571, sec. 3, adopted 7/21/52)

Sec. 5.05.064 Penalty for violation

Any person, firm, corporation, company or association who shall violate any of the provisions of this division, or suffer or allow the same to be violated, shall upon conviction therefor be subject to a fine as provided in section 1.01.009 of this code. (Ordinance 571, sec. 4, adopted 7/21/52; Ordinance adopting Code)

ⁱ* State law reference—Fire department in home-rule municipality, V.T.C.A., Local Government Code, sec. 342.011.

ⁱⁱ* State law references—State regulation of fireworks and fireworks displays, V.T.C.A., Occupations Code, ch. 2154; authority of city to prohibit or further regulate fireworks, V.T.C.A., Occupations Code, sec. 2154.004.